

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

JOSEPH S. BOLEWSKI
Claimant

VS.

GREAT WESTERN MFG. CO., INC.
Respondent

AND

UNITED STATES FIDELITY & GUARANTY CO.
Insurance Carrier

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) Docket No. 231,917 & 231,918
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ORDER

Respondent requested Appeals Board review of Administrative Law Judge Julie A. N. Sample's October 25, 1999, preliminary hearing Order.

ISSUES

Claimant alleges he injured his upper back and neck while working for the respondent. He claims the repetitive work activities he was required to perform while fabricating certain reed brackets that culminated on April 15, 1997, and again on December 23, 1997, caused injury to his upper back and neck. Claimant's preliminary hearing requests were for medical treatment and temporary total disability benefits.

Two applications for hearings were filed in this matter by the claimant. One alleged an accident as a series culminating on April 15, 1997, which was assigned Docket No. 231,917. The second application alleged an accident of repetitive injuries culminating on December 23, 1997, which was assigned Docket No. 231,918.

The Administrative Law Judge found claimant established he injured his upper back and neck at work while performing repetitive work activities in December 1997. Also, the Administrative Law Judge concluded, at least for the December 1997 accident, that claimant had provided respondent with the statutorily required timely notice of accident. The respondent did not provide claimant with any medical treatment or temporary total disability benefits for these alleged injuries. But claimant, on his own, sought and received medical treatment for the injuries to his upper back and neck. During this same period,

claimant also required extensive medical treatment for a blood clot condition in his left upper extremity and brain.

The Administrative Law Judge granted claimant's request for payment of medical expenses for treatment of the injury to his upper back and neck. But the Administrative Law Judge denied claimant's request for medical treatment for the blood clot condition and any complications that arose from such condition. Also, the Administrative Law Judge denied claimant's request for temporary total disability benefits from August 4, 1998, the date claimant filed his Application for Preliminary Hearing.

On appeal, the respondent contends claimant failed to prove he injured his upper back and neck at work. Further, respondent contends claimant failed to give respondent timely notice of a work-related accident. Respondent's principal argument, relating to both of these issues, is that claimant is not credible and therefore his testimony is not believable.

Claimant, on the other hand, contends he proved through his testimony and the medical treatment records admitted into evidence at the preliminary hearing, that he injured his upper back and neck while performing repetitive work activities for the respondent. Also, claimant contends he provided respondent with the statutorily required timely notice of the accidents. Furthermore, claimant argues he proved the blood clots found in his left upper extremity and brain were related to the steroid trigger point injections that his personal physician, Stewart Grote, D.O., administered to him on January 19, 1998, while the doctor was treating claimant's work-related injuries. Thus, claimant asserts respondent should be ordered to pay as authorized medical expenses, all medical treatment incurred for his upper back and neck injuries, plus those expenses associated with his blood clot condition and complications that arose from such condition.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the preliminary hearing record and considering the arguments contained in the briefs of the parties, the Appeals Board finds that the Administrative Law Judge's preliminary hearing Order should be affirmed as to the Judge's conclusions that claimant suffered a work-related upper back and neck injury while performing repetitive work activities in December 1997. The Appeals Board agrees the respondent should be responsible for medical treatment associated for only the upper back and neck injuries and not for any medical treatment related to the blood clot condition and complications that arose from such condition.

Docket No. 231,917

The original Application for Hearing filed in this docketed claim alleged an accident date on or about April 15, 1997. At the continuation of the preliminary hearing held on October 1, 1999, claimant requested and was granted leave to amend the Application for

Hearing to allege a series of repetitive accidents culminating on April 15, 1997. The amended application was filed with the Division on October 8, 1999.

Claimant testified he injured his upper back and neck while fabricating reed brackets in April 1997. Claimant testified he did not notify the respondent of this injury and also did not request respondent to provide medical treatment for the injury. He went on his own to his personal physician, Stewart Grote, D.O. The doctor took claimant off work for a few days in April and treated claimant with manipulation plus steroid trigger point injections. After this medical treatment, claimant testified his symptoms completely resolved. Additionally, at that time, he was no longer required to fabricate the reed brackets that he felt caused his upper back and neck problems.

In the Administrative Law Judge's preliminary hearing Order, she did not make any specific findings in regards to claimant's alleged April 15, 1997, accident. But she did find that it appeared, at least for the December 1997 accident, that claimant did establish timely notice. As noted above, claimant specifically testified he did not notify the respondent that he injured his upper back and neck at work and did not request respondent to provide him with medical treatment in April of 1997. Thus, the Appeals Board concludes claimant failed to provide respondent with timely notice of the accident. Therefore, claimant is denied preliminary hearing benefits for the alleged April 15, 1997, accident.

Docket No. 231,918

Claimant also amended this docket number's date of accident from on or about December 12, 1997, to repetitive injuries culminating on December 23, 1997.

Claimant contends he was required to again fabricate reed brackets in December 1997. Claimant testified that fabricating the reed brackets required him to move his head repetitively up and down and at the same time to lift his welding helmet repetitively up and down. As a result of these repetitive movements, claimant again had symptoms in his upper back and neck.

Claimant returned to his personal physician, Dr. Grote, for examination and treatment. Dr. Grote's medical records were admitted into evidence at the preliminary hearing. His December 15, 1997, note indicates claimant made complaints of two weeks of upper back pains that were associated with his work. Dr. Grote took claimant off work for two days and then returned him to work with permanent restrictions of no grinding and no heavy lifting.

Claimant returned to work on December 17 with Dr. Grote's permanent restrictions. Claimant testified his supervisor, Rick Miller, notified him the respondent could not accommodate the permanent restrictions and claimant was forced to quit on December 23, 1997. At the time claimant gave his supervisor, Mr. Miller, the permanent work restrictions

slip, claimant testified he told Mr. Miller his work activities had caused his upper back and neck problems.

On January 14, 1998, claimant telephoned respondent's workers compensation insurance carrier in Florida and made a claim for workers compensation benefits. On the same day, the insurance carrier contacted the respondent in reference to the claim. The respondent through its controller, Ron Jordan, then completed an Employer's Report of Accident. In a letter dated January 28, 1998, respondent's insurance carrier denied claimant's claim for workers compensation benefits and directed claimant to request his medical expenses be paid through his group health insurance carrier.

Claimant continued medical treatment with his personal physician, Dr. Grote. On January 19, 1998, the doctor gave claimant a local trigger point steroid injection and placed claimant in a physical therapy program. After the injection, claimant testified his left hand became numb and his fingers throbbed and turned blue. Claimant's condition then deteriorated rapidly and Dr. Grote referred claimant to other physician specialists for examination and treatment. Claimant was hospitalized on February 4, 1998. He was diagnosed with thromboembolism of the left ulnar and radius arteries. Claimant remained hospitalized and received treatment for the thromboembolism of the left arm. During this treatment, claimant began having headaches, and a CT scan found claimant with a large cerebellar hemispheric blood clot.

On February 13, 1998, claimant underwent a left suboccipital craniectomy with evacuation of an intracerebellar hematoma. This surgical procedure was performed by neurosurgeon, Frank P. Holladay, M.D. The blood clots found in claimant's left arm had caused the finger tips of his left hand to be gangrenous. After claimant recovered sufficiently from the removal of the blood clot in his brain, Gary D. Hall, M.D., a plastic surgeon, amputated the tips of claimant's left index, long, and ring fingers.

Because claimant continued to have significant symptoms in his cervical spine area, Dr. Holladay had him undergo a cervical myelogram with a CT scan. Dr. Holladay found a nerve root compression on the left side at C6-7. On June 11, 1998, Dr. Holladay performed a posterior cervical hemilaminotomy on the left at C6-C7 with decompression of the C7 nerve root.

Dr. Holladay continued to follow claimant and in a letter dated December 1, 1998, opined that claimant had met maximum medical improvement in regard to his upper back and neck problems. He further opined that the combination of both claimant's neck problems and left hand and finger problems made claimant unemployable.

Finally, in a letter to claimant's attorney dated May 25, 1999, Dr. Holladay related claimant's cervical injury and the need for the cervical surgery to claimant's work. But, as to the issue of the blood clots in claimant's upper extremity, the doctor indicated he did not have a medical opinion.

Claimant's attorney had Christopher F. Sirridge, M.D., review claimant's medical treatment records. In a letter dated September 9, 1999, on his stationery that does not indicate his speciality, Dr. Sirridge opined that claimant's cervical arthritis with discogenic radiculopathy was related to claimant's work as a welder and as a metal fabricator. The doctor also found that claimant's blood clotting was a result of the vasoconstriction and spasms stemming from Dr. Grote's steroid trigger point injections. Additionally, Dr. Sirridge found claimant suffered from narcotic dependence resulting from taking narcotic pain medication for treatment of severe, chronic, unrelenting pain.

At the preliminary hearing, there was conflicting testimony between the claimant and three of respondent's current employees. All of these witnesses testified in person before the Administrative Law Judge at the preliminary hearing. Thus, the Administrative Law Judge had the opportunity to judge the credibility of the witnesses. In regard to the December 1997 work accident and injury, claimant testified he notified first his lead man, Gerald F. Byrd, and then his supervisor, Rick Miller, that the work activities he had to perform while fabricating reed brackets caused him to have pain and discomfort in his upper back and neck. Further, claimant testified, after he gave the light-work slip from Dr. Grote to Mr. Miller on December 17, 1997, Mr. Miller notified claimant that the respondent could not accommodate the light-work restrictions. Mr. Miller then told claimant to take a week of vacation and then he would be terminated on December 23, 1997. Both Mr. Byrd and Mr. Miller contradicted claimant's testimony and testified claimant never told them that he was injured at work. In fact, Mr. Miller, although acknowledging claimant provided him with a light-duty work slip from his physician on December 17, 1997, claims that claimant voluntarily quit to work on automobiles at his home.

The current notice statute requires an injured worker to notify the respondent of a work-related accident within 10 days thereof or establish just cause within 75 days as the reason for not giving the 10-day notice.¹ In this case, the Administrative Law Judge found claimant gave respondent notice of the work-related accident, at the latest, on January 14, 1998. The Administrative Law Judge went on to find, although this was not within 10 days of the accident, there was just cause to allow claimant the extended period to give notice. But the Appeals Board finds claimant's testimony coupled with the fact, on December 17, 1997, he gave his supervisor, Rick Miller, the permanent restrictions imposed by Dr. Grote, persuasive that claimant notified respondent his work activities had caused him injury as of December 17, 1997. Furthermore, Dr. Grote's medical records and claimant's testimony established that his last day worked was December 12, 1997, and therefore, for a repetitive trauma injury, this is claimant's appropriate date of accident.² Thus, as found above, claimant provided respondent with notice of accident on December 17, 1997, clearly within 10 days of his December 12, 1997, accident date.

¹See K.S.A. 44-520.

²See Treaster v. Dillon Companies, Inc., 267 Kan. 610, 987 P.2d 325 (1999).

The Appeals Board concludes the Administrative Law Judge's findings and conclusions set forth in the preliminary hearing Order, in regard to whether claimant suffered a work-related injury, his need for medical treatment, and payment of temporary total disability benefits, are accurate and supported by the record. Those findings and conclusions are affirmed and adopted by the Appeals Board as its own to the extent they are not inconsistent with this Order.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that preliminary benefits are denied for lack of timely notice in Docket No. 231, 917. In Docket No. 231,918, the Appeals Board finds claimant proved he suffered work-related injuries with an accident date of December 12, 1997, and he provided respondent with timely notice of accident. Respondent is ordered to pay all past and future reasonable and necessary medical expenses for medical treatment for claimant's upper back and neck injuries, not associated with his blood clot condition. Temporary total disability benefits are denied.

IT IS SO ORDERED.

Dated this ____ day of March 2000.

BOARD MEMBER

c: Philip R. Carson, Kansas City, KS
Kristine A. Purvis, Overland Park, KS
Julie A. N. Sample, Administrative Law Judge
Philip S. Harness, Director